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PATENT
Attorney Docket No.: 016354-005213US

TOWNSEND and TOWNSEND and CREW LLP

By: /s/connie larson/
Connie Larson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Keith G. Lurie

Application No.: 10/796,875

Filing Date: March 8, 2004

For: VENTILATOR AND METHODS
FOR TREATING HEAD TRAUMA
AND LOW BLOOD CIRCULATION

Confirmation No.: 2670

Examiner: Nihir B. Patel

Art Unit: 3772

STATEMENT SHOWING
UNAVOIDABLE DELAY UNDER
37 CFR 1.137(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On June 21, 2006, Applicant filed an Amendment in response to a final Office Action mailed April 21, 2006. On October 11, 2006, an Advisory Action was mailed to the Applicant indicating that the previous Amendment was lacking the Terminal Disclaimers. Accordingly, on October 19, 2006, Counsel spoke to Examiner Nihir Patel by telephone to discuss filing of the Terminal Disclaimers. As set forth in the Communication filed on October 19, 2006, Examiner Patel requested that the Terminal Disclaimers be filed with a Communication. Further, Examiner Patel stated that if the Terminal Disclaimers were submitted before October 21, 2006, that the application would not go abandoned and that Applicant would not need to file an RCE. Counsel for Applicant expressed his concern to the Examiner that the statutory six month deadline was approaching. However, Examiner Patel indicated that with the filing of the Terminal Disclaimers the application would be passed on to allowance and that no further communication would be

needed from the Applicant, regardless of the six month statutory deadline. Counsel made this conversation of record in a Communication. Nearly eight months later, Examiner Patel on June 14, 2007 issued an Advisory Action indicating that the previously filed Amendment raised new issues that would require a further search and gave the Applicant three months from the mailing date of the Final Rejection. This Advisory Action is nonsensical in that it was mailed more than a year after the final Office Action was issued. Had Applicant been informed by the Examiner during the October 19th telephone conference that the Examiner would not place the application in condition for allowance, Applicant would have filed an RCE. However, relying upon unrefuted comments from the Examiner that the Examiner would place the application in condition for allowance and that an RCE would not be needed, one was not filed. Subsequently, the case has gone abandoned as indicated in the Notice of Abandonment mailed August 6, 2007. As such, Counsel respectfully requests that the application be revived and prosecution be reopened.

Respectfully submitted,

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